

The ALJ found claimant failed to prove his injury arose out of and in the course of his employment with respondent because claimant was an independent contractor and not an employee of respondent. The ALJ further found that even if the claimant proved an employer/employee relationship, claimant was an employee of Norman Kightlinger as an individual and not the lumberyard. Thus, the ALJ held the Act again would not apply because Norman Kightlinger as an individual had insufficient payroll to come within its provisions.

The Appeals Board finds the ALJ's Order should be affirmed. The Appeals Board does so for the reasons set forth in the ALJ's Order. The Order sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the ALJ's findings and conclusions as its own as if specifically set forth herein.

Furthermore, both claimant and Mr. Kightlinger testified at the preliminary hearing. Their testimony differed in several key respects. Where there was a conflict, the ALJ accepted the testimony of Mr. Kightlinger over that of claimant. The Board gives some deference to the ALJ's assessment of credibility.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS
Vincent A. Burnett, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director